THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.3250 OF 2002

DATED:22.8.2005

Between:

B. Laxman, S/o.Pochaiah

R/o.Jalalpur, Nizamabad Mandal and District

…Petitioner

And

Cooperative Tribunal, M.J.Road,

Hyderabad and others

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.3250 OF 2002

ORDER:

The petitioner worked as clerk of third respondent, namely, Primary Agricultural Cooperative Society Limited, Gundaram, Nizamabad Mandal, Nizamabad District, during the period 1987-1990. Second respondent conducted enquiry under Section 51 of the A.P.Cooperative Societies Act, 1964 (for short, the Act). Basing on such enquiry, on certain irregularities, second respondent issued an order of surcharge under Section 60(1) of the Act. The petitioner preferred an appeal being C.T.A.No.44 of 1994 before first respondent Tribunal. Learned Tribunal by order dt.19.4.1996 allowed the appeal and remanded the matter to second respondent for fresh

consideration on the ground that second respondent did not conduct independent enquiry under Section 60(1) of the Act. After remand, second respondent called upon the petitioner to submit explanation showing cause as to why the amounts should not be recovered from him. The petitioner submitted explanation. After considering the explanation, second respondent issued a notice of personal hearing on 16.9.1997 and by proceedings dt.21.10.1998 issued surcharge proceedings. Aggrieved by the same, petitioner again preferred appeal before first respondent being C.T.A.No.173 of 1998. The learned Tribunal by order dt.13.12.2001 dismissed the appeal confirming the proceedings of second respondent surcharging the petitioner. The order of the learned Tribunal is assailed in the Writ Petition.

Learned counsel for the petitioner, Sri Ramdas Bhadri Raju, submits that second respondent has not conducted any independent enquiry before passing surcharge order and therefore the same is vitiated. Secondly, he would urge that when an enquiry is conducted under Section 51 of the Act and such enquiry is basis for initiating action under Section 60 of the Act, adequate opportunity should be given to the officer concerned by duly recording evidence and permitting the officer to cross-examine the witnesses. He further submits that though various contentions are raised before the Cooperative Tribunal, they were not considered by the Cooperative Tribunal. He placed reliance on **S.Ramadas v. The Subordinate Judge, (Cooperative Tribunal), Kothagudem, Sammeta Rama Subba Rao v. President, Kaikaluru Irrigation and Power Department, Challa Sanyasinaidu v. Deputy Registrar of Cooperative Societies** and **Lankala Koderu Cooperative RuralBank Ltd., Palacol Mandal v. Ungarala Pullaiah Naidu.**

Per contra, learned Government Pleader for Cooperation submits that initially surcharge order was passed against petitioner which he challenged before the Tribunal. The Tribunal remanded the matter to second respondent and thereafter second respondent issued a notice directing the petitioner to appear for personal hearing and in spite of many notices, petitioner did not appear before second respondent and therefore surcharge order was passed on 21.10.1998 based on the record. In such circumstances, according to the learned Government Pleader, the principle laid down by the Division Bench in **Sanyasi Naidu case** (supra) has no application. He placed reliance on judgment in **M.V.R.Reddy v. Deputy Registrar of Cooperative Societies.**

A reading of the order passed by second respondent on 21.10.1998 would show that the petitioner was given opportunity of personal hearing at least on four occasions. But he failed to appear before second respondent nor did he submit any explanation/reply along with evidence. Therefore, second respondent proceeded on the premise that petitioner has no explanation to submit and passed the orders. He considered each of the allegations based on the record and enquiry report and held against the petitioner. The petitioner does not dispute that second respondent issued a notice calling for personal hearing on 16.9.1997. The learned counsel for the petitioner, however, submits that the notice of enquiry and personal hearing without communicating the allegations is futile. The submission is misconceived.

Second respondent initially issued surcharge order based on the enquiry

report. The same was set aside by the Cooperative Tribunal in C.T.A.No.44 of 1994. After remand, second respondent again called upon the petitioner to show cause and appear for personal hearing. After receiving the show cause notice/notice of hearing, nothing prevented the petitioner to ask for enquiry report or memo of allegations/charges. Therefore, a reasonable inference can be drawn that petitioner himself avoided. In such an event, the decisions of this Court in **Sanyasi Naidu case** (supra) and **Lankala Koderu case** (supra) have no application. In support of this, learned Government Pleader rightly placed reliance on the following observations in **M.V.R.Reddy case** (supra).

> I am of the considered opinion that even the aforesaid two judgments may not render any assistance to the submissions made on behalf of the petitioner. Here is a case, where an independent enquiry has been initiated under Section of the Act and reasonable opportunity was afforded to the petitioner, proceedings were repeatedly adjourned at the instance of the petitioner and yet the petitioner has chosen not to submit his explanation. There was no other material before the authority concerned, except the material on record made available to the authority prepared under Section 52 of the Act. The material could definitely constitute reason for initiating action. Even the show-cause notice dt.25-8-1990 does not say as to why the order of surcharge should not be passed against the petitioner, as he is found responsible for mis-appropriation of the funds of the society in terms of Inspection report under Section 52 of the Act. The show-cause notice, on the other hand, gives details of the amounts alleged to have been mis-appropriated by the petitioner. Nothing prevented the petitioner to raise an objection and no reason is forthcoming from the petitioner as to why he had failed to peruse the records in spite of an opportunity given to him. The conduct of the petitioner suggests that he was making an attempt for eternal postponement of the proceedings initiated against him under Section 60 of the Act. The material available on record against the petitioner, including the Inspection report prepared and submitted under Section 52 of the Act could not have been ignored by the Registrar and the same was taken into consideration and rightly so, in my considered opinion, the petitioner could have satisfied the Registrar as to why such material should not be taken into consideration. Having failed to do so, the petitioner cannot be allowed to raise hue-and-cry in this writ petition. Fairness is not one way affair.

When the Surcharging Officer gave adequate opportunity to an official of the Cooperative Bank and the latter fails to avail such opportunity, the surchargee cannot be heard to contend in the proceedings under Article 226 of the Constitution of India that the order is vitiated for not conducting enquiry. In that view of the matter, this Court does not find any infirmity in the impugned order of the Cooperative Tribunal.

The Writ Petition is devoid of merit and is accordingly dismissed with costs.

(V.V.S.RAO, J)

22.8.2005

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